

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES GRZESLO,

Plaintiff,

v.

RAYTHEL FISHER, JR. et al.,

Defendants.

Case No. 1:21-cv-01371-EPG (PC)

ORDER DENYING MOTION TO  
SUBSTITUTE PARTIES

(ECF No. 20)

Plaintiff James Grzeslo is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (ECF Nos. 1, 5). In a motion dated December 2, 2021, Plaintiff moves under Federal Rule of Civil Procedure 25(d) to substitute Warden Raythel Fisher, Jr. with “the new prison Warden, Landon Bird” as a Defendant in this case. (ECF No. 20, p. 2). The Court will deny the motion.

Federal Rule of Civil Procedure 25(d) provides as follows:

An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party. Later proceedings should be in the substituted party’s name, but any misnomer not affecting the parties’ substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

1 Here, on the same date that Plaintiff dated his motion for substitution, the Court entered its  
2 second screening order, concluding that Plaintiff failed to state any cognizable claims, including  
3 against Warden Fisher. (ECF No. 19). That order gives Plaintiff thirty days to file an amended  
4 complaint or file a statement with the Court that he wants to stand on his first amended complaint  
5 and have it reviewed by a district judge. If Plaintiff chooses the former option, he may simply  
6 name Landon Bird in place of Warden Fisher if he believes that he is a proper defendant and  
7 Warden Fisher is not. If Plaintiff chooses the latter option, and the district judge concludes that  
8 Plaintiff has stated a claim against Warden Fisher, Plaintiff may again move to substitute parties  
9 if Plaintiff believes that Landon Bird should be substituted in his place.

10 Accordingly, IT IS ORDERED that Plaintiff's motion to substitute parties (ECF No. 20)  
11 is denied.

12  
13 IT IS SO ORDERED.

14 Dated: **December 8, 2021**

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE